

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

**CASE NO.: 2:23-cv-01495-JHC**

**GOVERNMENT PLAINTIFFS'  
STATEMENT REGARDING  
PRIVATE PLAINTIFFS' MOTION  
REGARDING ECONOMICS DAY  
HEARING**

In response to the Private Plaintiffs’ Motion to Participate in Coordinated Economics Day Hearing recently filed in *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-693 (W.D. Wash.), Dkt. #208 and *Frame-Wilson v. Amazon.com, Inc.*, No. 2:20-cv-424 (W.D. Wash.), Dkt. #201, Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York, Connecticut, New Hampshire, Oklahoma, Oregon, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Puerto Rico, Rhode Island, Vermont, and Wisconsin, by and through their respective Attorneys General (together, “Plaintiff States,” and collectively with the FTC, “Government Plaintiffs”) submit this statement.

## **I. BACKGROUND**

During the June 6, 2024, status conference, the Court expressed interest in “a hearing where [the Court] would hear from both sides’ economists about the theories being advanced in this case,” *i.e.*, *FTC et al. v. Amazon*. June 6, 2024, Hr’g Tr. 4:14-24. On June 27, 2024, Government Plaintiffs and Amazon filed a Joint Statement Regarding Proposed Economics Day Hearing concerning the structure, timing, and protocols for the proposed economics day hearing. Dkt. #263. Following further discussions with the Court at the September 3, 2024, status conference, the parties filed a further Joint Statement Regarding Proposed Economics Day Hearing on October 1, 2024, setting forth a list of eleven topics that the parties agreed would be appropriate for discussion at the proposed economics day hearing. Dkt. #290.

On October 3, 2024, Private Plaintiffs in *De Coster* and *Frame-Wilson* filed a motion in those cases “request[ing] that the Court permit [Private] Plaintiffs and their economist to present at a coordinated economics day hearing with the FTC and Amazon,” or, “[i]n the alternative . . . that they be permitted to attend and respond to the economics day hearing via submission to the Court or at a subsequent Court hearing.” *See De Coster v. Amazon.com, Inc.*, No. 2:21-cv-693, Dkt. #208 at 2-3.

## II. GOVERNMENT PLAINTIFFS' STATEMENT

Government Plaintiffs' understanding is that the Court is interested in holding an economics day hearing "to be as educated as possible regarding the economic theories in this case," and to hear "from both sides' economists about the theories being advanced in this case." June 6, 2024, Hr'g Tr. 4:16-19. While Private Plaintiffs are suing over some of the same Amazon conduct that is at issue here, Government Plaintiffs are also challenging conduct that is not at issue in *De Coster* or *Frame-Wilson*. See Notice of Related Cases, Dkt. #4 at 3. Further, the *De Coster* and *Frame-Wilson* cases are differently situated, given that class certification briefing is underway in *De Coster* and will start by December in *Frame-Wilson*.

Private Plaintiffs' motion highlights their interest in addressing class certification issues and a related *Daubert* motion in a combined economics day hearing. See, e.g., *De Coster*, Dkt. #208 at 9 ("[Private] Plaintiffs request the opportunity to inform the Court about their positions on the . . . economics underlying their grounds for class-wide resolution of their claims against Amazon."); *id.* at 8 (discussing Amazon's anticipated *Daubert* challenge to Private Plaintiffs' economic expert in connection with Private Plaintiffs' class certification motion); *id.* at 2 ("Amazon could, with [Private] Plaintiffs' class certification filings and reports in hand, try to undermine [Private] Plaintiffs' analysis and sow doubt about the propriety of class treatment."). Combining economic issues related to class certification and a potential *Daubert* challenge in the class cases with the economic theories pertinent to this case would complicate any economics day hearing. A combined hearing may also need to involve different protocols for different cases—for example, Government Plaintiffs and Amazon have agreed that nothing presented at an economics day hearing may be used to cross-examine witnesses at deposition or trial. Joint Statement, Dkt. #263 at 2-3, 6. It is not clear whether that protocol would be suitable for the class cases.

For the reasons stated above, Government Plaintiffs believe that Private Plaintiffs' alternative request for leave to "respond to the economics day hearing via submission to the Court or at a subsequent Court hearing" in those cases may be a less complicated and more efficient path forward. Government Plaintiffs will be prepared to address the proposed topics, structure, timing, and protocols for an economics day hearing at the upcoming December 2, 2024, status conference as planned, including the issues raised by Private Plaintiffs' motion.

Dated: October 18, 2024

Respectfully submitted,

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